

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MIDAMERICAN ENERGY COMPANY, BLACK HILLS/IOWA GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY, IOWA ASSOCIATION OF ELECTRIC COOPERATIVES, INTERSTATE POWER AND LIGHT COMPANY, and IOWA ASSOCIATION OF MUNICIPAL UTILITIES, Petitioners, v. IOWA UTILITIES BOARD, Respondent.	CASE NO. CVCV064145 RESPONDENT IOWA UTILITIES BOARD’S BRIEF
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COMES NOW, the Iowa Utilities Board, by and through its undersigned counsel, and hereby submits the above-captioned Respondent’s Brief in Resistance to the Petition for Judicial Review.

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I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW.

Standard of Review.

Cases:

AFSCME Council 61 v. Pub. Emp't Rel. Bd., 846 N.W.2d 873 (Iowa 2014)
Burton v. Hilltop Care Ctr., 813 N.W.2d 250 (Iowa 2012)
NextEra Energy Res. LLC v. Iowa Utils. Bd., 815 N.W.2d 30 (Iowa 2012)
State v. Wiederien, 709 N.W.2d 538 (Iowa 2006)

Statutes:

Iowa Code § 17A.19(8)(a) (2021)
Iowa Code § 17A.19(10) (2021)
Iowa Code § 17A.19(10)(a) through (n) (2021)
Iowa Code §§ 17A.19(10)(b), (c), (h), (i), (j), (k), and (n) (2021)
Iowa Code § 17A.19(11)(b) (2021)

Did the Iowa Utilities Board err in its interpretation of Iowa Code section 476.10A and is its decision to make an assessment for calendar year 2021 otherwise unreasonable, arbitrary, capricious, or an abuse of discretion?

Cases:

Clarion Ready Mixed Concrete Co. v. Iowa State Tax Comm'n,
252 Iowa 500 (Iowa 1961)
Doe v. State, 943 N.W.2d 608 (Iowa 2020)
NextEra Energy Res. LLC v. Iowa Utils. Bd., 815 N.W.2d 30 (Iowa 2012)
Porter v. Harden, 891 N.W.2d 420 (Iowa 2017)
State v. Tesch, 704 N.W.2d 440 (Iowa 2005)
United Elec. Radio & Mach. Workers of Am. v. Iowa Pub. Emp. Rel. Bd.,
928 N.W.2d 101 (Iowa 2019)

Statutes:

Iowa Code § 476.10A (2021)
Iowa Code § 476.10A(1)(a) (2021)
Iowa Code § 476.10A(1)(c)(2021)
Iowa Code § 476.10A(1)(c)(1)(a)-(d) (2021)

II. STATEMENT OF THE CASE.

A. Nature, Course and Disposition.

In May 2022, the Iowa Utilities Board (Board) issued invoices to gas and electric utilities for a final assessment as required by Iowa Code section 476.10A. After several utility companies filed objections to the assessment, the Board opened Docket Case No. SPU-2022-0003 and conducted a formal proceeding with oral argument and briefing. The Board filed its Order Denying Objection to Invoice on July 29, 2022.

Thereafter, MidAmerican Energy Company, Black Hills Iowa Gas Utility Company LLC d/b/a Black Hills Energy, Iowa Association of Electric Cooperatives, Interstate Power and Light Company, and Iowa Association of Municipal Utilities (collectively Utilities) timely filed their petition for judicial review of final agency action – the Board’s July 29, 2022 order. Subsequently, the Utilities filed with the Board a Motion to Stay the assessment. After the Board denied the motion, the Utilities filed a Motion to Stay the Board order and assessment in district court. In the order of September 23, 2022, this Court granted Petitioners Utilities’ Motion to Stay the Board’s assessment. The issue now before the court is whether the Board was statutorily required to assess the Utilities for the 2021 calendar year pursuant to § 476.10A(1)(c)(1)(a-d) (2021)

B. Relevant Facts.

As the Utilities assert, the relevant facts are not in dispute. Further, the facts are not central to the issue of statutory interpretation. However, the Board disagrees with the Utilities’ characterization of those facts and the argumentative

nature in which they are presented. Some are subjective allegations or unsubstantiated conclusions, such as describing action “as required” or entities “recogniz[ing]” legislative intent. Therefore, the relevant facts are summarized.

The legislature first enacted the Iowa Code section 476.10A assessment in 1990 to fund the Iowa Energy Center (IEC) at Iowa State University. 1990 Iowa Acts, ch. 1252 § 30. Pursuant to section 476.10A, the Board directed the Utilities to remit to the state treasurer “one-tenth of one percent of the total gross operating revenues during the last calendar year” derived from their operations with the “first remittance be made not before July 1, 1991.” Iowa Code § 476.10A(1)(a) (2001). Eighty-five percent of the remittances collected was appropriated to the IEC while the remaining fifteen percent was appropriated to the Center for Global and Regional Environmental Research (CGRER) .

In 2017, the legislature moved authority over the IEC from Iowa State University to the Iowa Economic Development Authority (IEDA). 2017 Iowa Acts ch. 169, § 35 (eliminating Iowa Code section 266.39C and creating section 15.120). The legislature also imposed a sunset date for Iowa Code section 476.10A funding obligations. *Id.* §§ 34-38, 40 (providing that sections 15.108(g), 15.120, 476.1A(e), 476.1B(k), 476.1C(b), and 476.10A are “repealed July 1, 2022”). As a result, section 476.10A(1)(a) and its requirement for the Board to assess for the “last calendar year” remained in effect until June 30, 2022.

A year later, the legislature amended section 476.10A to establish specific amounts of funds to be distributed pursuant to this code section. 2018 Iowa Acts

ch. 1172, § 91 (codified at Iowa Code § 476.10A (2018)). As amended, section 476.10A now states:

c. (1) Of eighty-five percent of the remittances collected pursuant to this section, the following shall occur:

(a) For the fiscal year beginning July 1, 2018, such remittances are appropriated to the Iowa energy center created in section 15.120.

(b) For the fiscal year beginning July 1, 2019, the first one million two hundred eighty-thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

(c) For the fiscal year beginning July 1, 2020, the first two million nine hundred ten thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

(d) For the fiscal year beginning July 1, 2021, the first three million five hundred thirty thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

Iowa Code § 476.10A(1)(c)(1)(a)-(d) (2021).

Neither the 2017 nor the 2018 amendments made revisions to Iowa Code section 476.10A(1)(a), which provides:

The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

Iowa Code § 476.10A(1)(a) (2021).

Again, this section was effective until June 30, 2022, based on the sunset date of the statute. Assessments made pursuant to this section have at all times been based upon the “last” calendar year gross operating revenues and not based

upon fiscal year revenues. Upon the effective date of the 2018 amendments, no assessment had yet been made pursuant to Iowa Code section 476.10A(1)(a) for calendar year 2017. Additionally, calendar years 2018, 2019, 2020, and 2021 would conclude prior to the July 1, 2022 sunset date. This left a total of five calendar years to be assessed/collected pursuant to the section.

The Board sought clarification from the Iowa Legislative Services Agency (LSA) on October 17, 2018 and received confirmation on October 18, 2018, that LSA understood the statute, as modified in 2018, to require the Board to assess/collect for calendar year 2021 with receipt in calendar year 2022. See *Board Exhibit 1, attached*. The question asked of LSA at that time was “Is IUB required to collect any assessment during CY 2022?” *Id.* IUB’s Intention to invoice in this manner was communicated to IEDA and then chair of the IEC, Tim Whipple of IAMU.

Based on section 476.10A, the Board billed the Utilities as follows:

- 2018 invoice for 2017 calendar year assessment
- 2019 invoice for 2018 calendar year assessment
- 2020 invoice for 2019 calendar year assessment
- 2021 invoice for 2020 calendar year assessment
- 2022 invoice for 2021 calendar year assessment

See Cert. Rec., pp. 29-30.

As reflected in the record and the parties’ stipulations, the Board had invoiced the Utilities each calendar year for assessments due from the previous calendar year. In the fall of 2020, the Board invoiced the Utilities for the calendar year 2019 assessment. However, in anticipation of the sunset for section 476.10A funding for IEC, the Board invoiced the Utilities in May 2021 for the calendar year

2020 assessment. This correspondence with the 2021 invoice contained express language that “Iowa Code 476.10A sunsets on July 1, 2022, and the IUB expects to issue one final assessment in April/May 2022 based on calendar year 2021 revenues.” Cert. Rec., p. 50

In a June 30, 2021 letter to the IEDA, the Board explained its change in timing to the May invoice:

This letter is to inform you of a transfer of funds from the Iowa Utilities Board (IUB) to the Iowa Energy Center (IEC) and the Center for Global & Regional Environmental Research (CGRER) pursuant to Iowa Code § 476.10A.

Iowa Code provides that all gas and electric utilities are to remit one-tenth of 1 percent of total gross operating revenues during the last calendar year derived from their intrastate public utility operations.

As you are aware, 476.10A will be repealed by operation of law on July 1, 2022. *As a result, the IUB adjusted the timing of invoicing and remittance for 476.10A assessments in order to ensure that the IUB fulfills its statutory obligations before the statute is repealed.*

In the fall of 2020, the IUB invoiced for and collected funds based on utilities’ 2019 calendar year gross operating revenues as reported on their 2019 utility annual reports. In October 2020, the IUB disbursed these funds to IEC, CGRER, and the State General Fund, pursuant to 476.10A(c)(1)(c).

In the spring of 2021, the IUB has now invoiced for and collected funds based on utilities’ 2020 calendar year gross operating revenues as reported on their 2020 utility annual reports.

Because the IUB has already transferred the remittances covering calendar year 2019 during state fiscal year 2021, the State General Fund has received its statutorily required amount of \$2,910,000. Of the remittances covering calendar year 2020, 85 percent is to be sent to IEC and 15 percent is to be sent to CGRER.

Cert. Rec., pp. 17-18 (emphasis added).

As the Board explained, it adjusted its invoicing to fulfill its statutory obligation. To this end, in May of 2022, the Board issued its last invoice and assessment to the Utilities based on the utility companies' operating revenues for the calendar year 2021. In all, the Board only issued one invoice per calendar year and only assessed the Utilities one time for each calendar year:

The Utilities objected to the Board's final May 2022 invoice and assessment under Iowa Code section 476.10A. Following hearing and oral argument, the Board issued its June 23, 2022 Order Denying Objection to Invoice. The Petitioner Utilities filed a timely petition for judicial review of the Board's order.

Thereafter, the Petitioners filed with the Board a Motion to Stay the Board's July 29, 2022 order pending judicial review pursuant to IUB rule 199—7.28(17A, 476). After the Board denied Petitioners' stay request, the Utilities filed their Motion to Stay the Board's order with this district court. On September 23, 2022, this Court granted the Utilities' Motion to Stay.

III. ARGUMENT.

Summary.

Before the Court is the question of interpretation of Iowa Code section 476.10A, which provided funding to IEC and the state general fund. Section 476.10A(1)(a) requires the assessment/collection of gross revenues from the "last calendar year" while section 476.10A(1)(c)(1)(a)-(d) requires disbursements by fiscal year beginning July 1, 2018, with the statute sunseting July 1, 2022. The crux of the issue before the court is that at the time of enactment of the 2018 amendments to section 476.10A, there were five calendar years yet to be

assessed pursuant to section 476.10A.1(a) although the amendments set forth a disbursement schedule spanning only four fiscal years. The Utilities assert that these facts require a reinterpretation of section 476.10A. The Board asserts that the statute can be fully and faithfully implemented in this scenario and that no action taken by the Board in response to these facts is inconsistent with the statute as written.

The statutory provisions at issue are unambiguous. In its July 29, 2022 order, the Board indicated the statutory language at issue is plain and must be read in a manner that gives meaning to all provisions. Given the sunset and to give effect to section 476.10A(1)(a), for assessments/collections “from [the] last calendar year,” required the Board in 2022 to invoice the “last calendar year assessment.” This was for calendar year 2021. Otherwise, the Board’s last calendar year assessment was for 2020 and would not have complied with section 476.10A(1)(c)(1)(d) and ultimately denied funds to the IEC and general fund as allocated by the legislature.

The Utilities make much ado about the timing of the invoices and the amounts actually disbursed. However, at the end of the day, there was only one invoice issued per calendar year and each made an assessment for the previous calendar year. It’s that simple and is not complicated as the Utilities attempt to make it. The Utilities argue about the timing of the invoices rather than whether the assessments were made as required by statute.

Standard of Review.

Iowa Code section 17A.19(10) governs judicial review of agency decisions. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 255 (Iowa 2012). The court may grant relief if the agency action has prejudiced the substantial rights of the petitioner and the agency action meets one of the enumerated criteria contained in sections 17A.19(10)(a) through (n). *Id.* at 256. “The burden of demonstrating...the invalidity of agency action is on the party asserting invalidity.” *AFSCME Council 61 v. Pub. Emp’t Rel. Bd.*, 846 N.W.2d 873, 877 (Iowa 2014). (quoting Iowa Code section 17A.19(8)(a)).

In its petition in this case, the Utilities enumerated seven grounds for judicial review pursuant to Iowa Code section 17A.19(10) and assert the Board’s order is—

(b) Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law;

(c) Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency;

(h) Action other than a rule that is inconsistent with the agency’s prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency;

(i) The product of reasoning that is so illogical as to render it wholly irrational;

(j) The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action;

(k) Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy; and

(n) Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

See Iowa Code §§ 17A.19(10)(b), (c), (h), (i), (j), (k), and (n) (2021).

In their brief, the Utilities correctly identified the central issue as one of law and not fact; whether the Board erred in its interpretation of section 476.10A. See Utilities' brief at 13. For this reason, the Board submits that the appropriate grounds for the Court's review are sections 17A.19(10)(c) and (n) and the Utilities have failed to argue and thus, have waived all other grounds originally asserted in their petition.

For the enumerated grounds at issue, Iowa Code sections 17A.19(10)(c), and (n), the Board agrees with the Utilities that the Court "[s]hould not give any deference to the view of [the Board] with respect to particular matters that have not been vested by a provision of law in the discretion of the agency."¹ See *id.* at § 17A.19(11)(b). When the legislature did not clearly vest the agency with the authority to interpret the statute, then the Court's review is for correction of errors at law. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 37 (Iowa 2012) (citation omitted).

¹ The Board agrees that it is not entitled to the Court's deferential standard of review in this particular case and under this set of facts only, but the Board does not waive its right to assert that certain precedent and the Board's expertise on substantive matters dictate a deferential standard of review in other cases.

THE IOWA UTILITIES BOARD DID NOT ERR IN ITS INTERPRETATION OF IOWA CODE SECTION 476.10A AND ITS DECISION TO MAKE AN ASSESSMENT FOR CALENDAR YEAR 2021 IS NOT OTHERWISE UNREASONABLE, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION.

- A. A proper analysis requires a determination of the ordinary and fair meaning of Iowa Code section 476.10A and whether the section is ambiguous.**

As the first step when interpreting the meaning of a statute, it is necessary to start with the statute's language. *Doe v. State*, 943 N.W.2d 608, 610 (Iowa 2020). The courts seek to determine the ordinary and fair meaning of the statutory language at issue, taking into consideration the language's relationship to other provisions of the same statute and other provisions of related statutes. *Id.* The statute is read and assessed as a whole rather than assessing isolated words or phrases. *Porter v. Harden*, 891 N.W.2d 420, 425 (Iowa 2017).

If statutory language in its proper context is unambiguous, the courts do not look past the plain meaning of the words. *United Elec. Radio & Mach. Workers of Am. V. Iowa Pub. Emp. Rel. Bd.*, 928 N.W.2d 101, 109 (Iowa 2019). "When the text of a statute is plain and its meaning clear, the court should not search for meaning beyond the express terms of the statute . . ." *State v. Tesch*, 704 N.W.2d 440, 451 (Iowa 2005). The courts resort to "rules of statutory construction only when the terms of [a] statute are ambiguous." *State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006) (citation omitted). The Court may not, however, extend or enlarge or otherwise change the meaning of a statute under the guise of construction. *NextEra Energy Resources LLC*, 815 N.W.2d at 39.

In the case at hand, the interpretation of Iowa Code section 476.10A funding requires an analysis of the statute as a whole. The specific provisions at issue, sections 476.10A.(1)(a) and 476.10A(1)(c) are not read in isolation and require a determination of their ordinary and fair meanings, which show that section 476.10A is unambiguous.

B. The Board correctly determined Iowa Code section 476.10A is unambiguous to reach its decision and assess the Utilities for calendar year 2021.

Following the above guiding principles set out by the Court, the Board correctly determined the statutory provisions clear and unambiguous and provided a basis for its reasoning as set forth in the Order Denying Objection to Invoice.

In setting out its interpretation of Iowa Code section 476.10A, the Board indicated its analysis was

guided by what the legislature actually said, rather than what it should or could have said and that all portions of a statute must be given meaning and effect.

See Cert. Rec., p. 125. The Board then correctly, as its first step, started with the language of the two primary provisions at issue. See Cert. Rec., pp. 125-126. The first, section 476.10A(1)(a), provides:

The board shall direct all gas and electric utilities to remit to the treasurer of the state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

The second, section 476.10A(1)(c), provides:

(1) Of eighty-five percent of the remittances collected pursuant to this section, the following shall occur:

(a) For the fiscal year beginning July 1, 2018, such remittances are appropriated to the Iowa energy center created in section 15.120.

(b) For the fiscal year beginning July 1, 2019, the first one million two hundred eighty-thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

(c) For the fiscal year beginning July 1, 2020, the first two million nine hundred ten thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

(d) For the fiscal year beginning July 1, 2021, the first three million five hundred thirty thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

Iowa Code §§ 476.10A(1)(a) and 476.10A.(1)(c)(1)(a)-(d) (2021).

The statute must be read as a whole and each provision must be given its ordinary and fair meaning. Iowa Code section 476.10A(1)(a) requires the Board to assess/collect for the “last calendar year.” Section 476.10A(1)(c) describes the disbursements of those assessments/collections. The ordinary and fair meaning of the former is an assessment requirement and the latter is a distribution requirement. In reading the two provisions in tandem and given their ordinary and fair meanings, it is important to note the direction for disbursement in section 476.10A(1)(c) does not alter the Board’s requirement to assess/collect pursuant to

section 476.10A(1)(a). Additionally, the period for the disbursement is not one and the same as the period for the timing for the assessment.

In its decision, the Board analyzed its responsibility to assess the “last calendar year” pursuant to section 476.10A(1)(a). The Board took into account that Iowa Code section 476.10A(1)(a) was in effect when Iowa Code section 476.10A(1)(c) regarding disbursements was enacted in 2018. It remained in effect on January 1, 2022, and required the Board to make an assessment for calendar year 2021. In conformance with Iowa Code section 476.10A(1)(a), the Board directed all gas and electric utilities to remit to the state treasurer one-tenth of 1 percent of the total gross operating revenues during the *last calendar year 2021* derived from their intrastate public utility operations.

The Board determined that its assessment for calendar year 2021 fulfilled its statutory obligation and further stated, the “Board has not attempted to make an assessment more than once for any calendar year.” The Board rejected the Utilities’ assertion that the calendar year 2021 assessment was contrary to statute. The Board concluded the Utilities’ position failed to give effect to section 476.10A(1)(a). In denying the Petitioner’s invoice objection, the Board acted in a manner which gave full-effect to all provisions of Iowa Code section 476.10A and violated none.² It gave full effect to both the assessment for calendar year 2021 and its disbursement pursuant to Iowa Code section 476.10A(1)(c)(1)(d).

The Board did not err in its interpretation of the plain unambiguous language of section 476.10A and the Board’s order was not otherwise unreasonable,

² The assessments were invoiced consistent with Board administrative rule 199—17.7(476).

arbitrary, capricious, or an abuse of discretion. See Iowa Code §§ 17A.19(10)(c) and (n) (2021). Additionally, the resulting calendar year 2021 assessment is not inconsistent with the evidence that has been presented.

First, the Board's interpretation of the statute and resulting assessments are consistent with the Legislative Services Agency, Fiscal Services Division's, (LSA) analysis of the 2018 legislative changes on the transfer of funds to the State General Fund as cited in the Utilities' Brief and as shown in the Board's communication from LSA. See *Utilities' Brief at 3 and Board Exhibit 1*. The amounts actually received by the State General Fund will be consistent with the anticipated amounts if the Board's correct interpretation of the statute is upheld. Any alleged discrepancies in amounts are irrelevant to the Board's compliance with the statute.

The plain language of Iowa Code section 476.10A(1)(c) provides only for specific, scheduled, and increasing disbursements to the general fund of the state. The number and amounts of the disbursements to the IEC are undefined and the IEC is appropriated any remaining balance of funds collected without an established minimum transfer or any cap setting a maximum amount to be transferred. So long as the amounts distributed pursuant to section 476.10A(1)(c) are made to the general fund, any additional funds are transferable to the IEC and CGRER consistent with the statutory language. The ordinary and fair meaning of the statute allows for five assessments/collections to be distributed through four appropriations.

The Board must implement the plain and clear meaning reflected in the statutory language used by the legislature and not what the legislature should have or could have said. The Utilities do not allege that the Board has attempted to make an assessment more than once for any calendar year. It is agreed that assessments have been issued by the Board as follows:

2018 invoice for 2017 calendar year assessment
2019 invoice for 2018 calendar year assessment
2020 invoice for 2019 calendar year assessment
2021 invoice for 2020 calendar year assessment
2022 invoice for 2021 calendar year assessment

See Cert. Rec., pp. 29-30.

Instead, the Utilities allege that an assessment upon calendar year 2021 is contrary to the legislative intent of Iowa Code section 476.10A(1)(c) and past Board practice. The Utilities' argument is not consistent with statutory interpretation and does not give effect to Iowa Code section 476.10A(1)(a).

The Utilities do not dispute that the general fund of the state has not received the sum of \$3,530,000 appropriated by Iowa Code section 476.10A(1)(c)(1)(d) based upon intrastate revenues from calendar year 2021. In order to effectuate the legislative directive of that section, a distribution of funds must occur and be credited to state fiscal year 2022. The implementation of section 476.10A(1)(a) and section 476.10A(1)(c)(1)(d), through the issuance of the invoices which are the subject of this objection and the distribution of the funds for state fiscal year 2022, allows for all provisions of the statute to be effectuated.

When a statute is clear and unambiguous, there is no need for further construction.³

The alternative interpretation offered by the Utilities is contrary to the ordinary and fair meanings of the statutory provisions at issue. The result sought by the Utilities, rescission of the May 2022 invoices, requires the Board to not only ignore the provisions of Iowa Code section 476.10A(1)(a), but also to leave the distribution directed by section 476.10A(1)(c)(1)(d) unfulfilled.

The Utilities also assert that the invoices which are the subject of this objection are contrary to Board practice. The record indicates that the Board has historically made one assessment for each calendar year the statute has been in effect. The record further indicates that the Board has distributed the funds collected in conformity with the relevant statutory provisions. The sunset of the statute required a change in the timing of the final assessments in order to fulfill the statutory requirements, but does not change the substantive actions of one assessment per calendar year and the transfer of any funds collected. The Utilities' argument is based on timing of the invoices and not about the assessment/collection required.

The Board explained its interpretation of the statute in the context of the statute's sunset in its June 21, 2021 letter to IEDA. The Board stated in part that it "adjusted the timing of invoicing and remittance for 476.10A assessments in order to ensure that the IUB fulfills its statutory obligations before the statute is repealed." In its assessments and distributions, the Board's actions are not

³ *Clarion Ready Mixed Concrete Co. v. Iowa State Tax Comm'n*, 252 Iowa 500, 507 (Iowa 1961).

inconsistent with the Board's prior practice, and even if they were found to be, the Board stated credible reasons sufficient to justify a fair and rational basis for the inconsistency, *i.e.*, the sunseting of section 476.10A.⁴ See Iowa Code § 17A.19(10)(h).

C. Any impact on customers does not alter the analysis of Iowa Code section 476.10A.

The Utilities assert that the Board's interpretation and implementation of Iowa Code section 476.10A harms utility customers. The Utilities do not assert that the impact on customers establishes a basis for judicial review pursuant to Iowa Code section 17A.19(10). The legislature determined the amounts to be assessed and the Board cannot refuse to comply with the plain language of a statute solely because the impact that statute might have on utility customers. By enactment, the legislature has deemed the use of those funds to be worthy of the cost to the payors of the fees.

CONCLUSION

In its interpretation of section 476.10A, the Board followed the guiding principles set by the Court. The Board interpreted Iowa Code section 476A.10A reading the statute as a whole and giving the relevant portions their ordinary and fair meanings. The Court is faced with the choice of accepting the plain language of the Code as written or adopting a reinterpretation of the statute in order to achieve a legislative intent divined by the Utilities. The Utilities' approach requires the Court to deny the implementation of section 476.10A(1)(a) and

⁴ Although the Board addresses Iowa Code section 17A.19(10)(h) here, it is still the position of the Board that the Utilities failed to raise and argue the issue thereby waiving this ground.

476.10A(1)(c)(1)(d) or provide an earlier sunset date for those provisions. The statute is fully implementable without such contortions.

On May 2, 2022, the Board had the calendar year 2021 revenue information for the Utilities. Iowa Code section 476A.10A(1)(a) was in full force and effect at that time. Pursuant to that provision, the Board was required to assess Utilities based on their “last calendar year” 2021 revenues. Accordingly, the Board issued its May 2022 invoice and assessment. The Board did not err in its interpretation of Iowa Code section 476.10A. The Board’s 2021 calendar year assessment/collection and order denying the Utilities’ objections were not otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. See Iowa Code sections 17A.19(10)(c) and (n). For all these reasons, the Board’s July 29, 2022 order upholding that assessment should be affirmed.

The Iowa Utilities Board respectfully requests that the Court deny the Utilities Petition for Judicial Review, direct the Utilities to comply with the duly authorized invoices and orders of the Board, and issue such further relief as appropriate under the circumstances.

Respectfully submitted,

/s/ Jon Tack

Jon Tack AT0007738
Iowa Utilities Board
1375 E. Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-7333
Email: jon.tack@iub.iowa.gov

/s/ Diana S. Machir

Diana S. Machir AT0006640
Iowa Utilities Board
1375 E. Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-7333
Email: diana.machir@iub.iowa.gov

**ATTORNEYS FOR RESPONDENT
IOWA UTILITIES BOARD**

ALL PARTIES SERVED ELECTRONICALLY.